

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

MARSENA MUNDY-MILLER,

Plaintiff,

v.

Case No:

Judge

Magistrate

THE TJX COMPANIES, INC. d/b/a T.J. MAXX,

Defendant.

Cary M. Makrouer (P26831)
Rema W. Dassouki (P82962)
THE THURSWELL LAW FIRM, PLLC
Attorneys for Plaintiff
1000 Town Center, Suite 500
Southfield, MI 48075-1221
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aessey@thurswell.com

John J. Gillooly (P41948)
GARAN LUCOW MILLER, P.C.
Attorney for Defendant
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jgillooly@garanlucow.com

**NOTICE FOR REMOVAL OF CAUSE TO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NOW COMES Defendant, THE TJX COMPANIES, INC. d/b/a T.J. MAXX, by and through its attorneys, GARAN LUCOW MILLER, P.C., and hereby gives notice of its removal of this action from the Circuit Court for the County of Oakland State of Michigan (Case No. 19-172959-NO) to the United States District Court for the Eastern District of Michigan Southern Division, pursuant to 28 U.S.C. §§ 1332 and 1441. In support of its Notice

of Removal, THE TJX COMPANIES, INC. d/b/a T.J. MAXX states as follows:

1. An action has been commenced against Defendant THE TJX COMPANIES, INC. d/b/a T.J. MAXX in the Circuit Court for the County of Oakland, State of Michigan, entitled Marsena Mundy-Miller v. The TJX Companies, Inc. d/b/a T.J. MAXX, Case No. 19-172959-NO. Copies of the Summons and Complaint, and all pleadings filed are attached hereto as **Exhibit A.**

2. THE TJX COMPANIES, INC. d/b/a T.J. MAXX was served with copies of the Summons and Complaint through its registered agent by certified mail on April 11, 2019. This Notice of Removal is due within thirty (30) days following receipt thereof, and is therefore timely under 28 U.S.C. § 1446(b)(1).

3. In her Complaint, Plaintiff alleges that she suffered an injury located at 17740 Thirteen Mile Road, in the City of Beverly Hills, in the County of Oakland and State of Michigan. Plaintiff seeks damages in an unspecified amount in excess of \$25,000, the jurisdictional minimum for a civil action filed in a Michigan circuit court. (**Exhibit A, ¶13**)

GROUND FOR REMOVAL

4. This Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and removal is proper pursuant to 28 U.S.C. § 1441(a), which provides, in pertinent part, that:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.

5. The United States District Court for the Eastern District of Michigan, Southern Division, has original jurisdiction because this is an action (a) wherein the amount in controversy exceeds the sum of \$75,000 exclusive of interests and costs; and (b) between citizens of different states.

6. Plaintiff alleges in her Complaint that she is a resident of the County of Oakland and resides in Michigan. (**Exhibit A**, ¶1) Thus, Plaintiff is a citizen of Michigan.

7. THE TJX COMPANIES, INC. d/b/a T.J. MAXX, is a foreign corporation with its principle place of business located in Framingham, Massachusetts. (See the State of Massachusetts Corporations Bureau Confirmation pages for The TJX Companies, Inc., attached hereto as

Exhibit B.) Thus, Defendant THE TJX COMPANIES, INC. d/b/a T.J. MAXX. is a citizen of the State of Massachusetts.

8. Because Plaintiff is a citizen of Michigan and Defendant, THE TJX COMPANIES, INC. d/b/a T.J. MAXX is a citizen of Massachusetts, there is complete diversity of citizenship between the parties.

9. Further, the amount in controversy exceeds \$75,000 as discerned from the allegations in Plaintiff's Complaint and pertinent jury verdict and settlement research. A notice of removal may assert the amount in controversy if the initial pleading seeks "a money judgment, but the State practice . . . permits recovery of damages in excess of the amount demanded" and the district court finds that the amount in controversy is more likely than not above \$75,000. See 28 U.S.C. § 1446(c)(A)-(B); see also Gafford v. Gen. Elec. Co., 997 F.2d 150, 158 (6th Cir. 1993), abrogated on other grounds, Hertz Corp. v. Friend, 130 S. Ct. 1181 (2010).

10. Plaintiff has alleged that she "was struck on the right hand, wrist and arm and sustained injuries, including but not limited to the following: contusion of right hand and wrist, disability, loss of enjoyment of life, has suffered or may yet suffer aggravation or activation of a pre-existing condition, wage loss and impairment of her earning capacity due to the

permanent nature of her injuries”. (**Exhibit A**, ¶13 and 14). Plaintiff’s allegations of injuries reflect a substantial likelihood that this controversy involves claims exceeding \$75,000.

PROCEDURAL REQUIREMENTS FOR REMOVAL

12 THE TJX COMPANIES, INC. d/b/a T.J. MAXX has satisfied or will satisfy all of the procedural requirements for removal under 28 U.S.C. § 1446.

a. In accordance with 28 U.S.C. § 1446(a), this is the appropriate court for removal because the state court in which this action was commenced, the Oakland County Circuit Court, is within this Court’s district and division. Copies of all process, pleadings, and orders served upon The TJX Companies, Inc. d/b/a T.J. Maxx in this action, including the Summons and Complaint, are attached as **Exhibit A**. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

b. In accordance with 28 U.S.C. § 1446(b)(3), this Notice of Removal is being timely filed within 30 days of the receipt of the Summons and Complaint.

c. In accordance with 28 U.S.C. § 1446(d), The TJX Companies, Inc. d/b/a T.J. Maxx is promptly notifying Plaintiff in writing that this case has been removed to this Honorable Court pursuant to this Notice of Removal. The TJX Companies, Inc. d/b/a T.J. Maxx has, contemporaneously with the filing of this Notice of Removal, filed a copy of the same with the court clerk of the Oakland County Circuit Court.

13. The prerequisites for removal have been met. If any questions arise as to the propriety of the removal of this action, THE TJX COMPANIES, INC. d/b/a T.J. MAXX respectfully requests the opportunity to present briefing, argument, and further evidence necessary to support its position that this case is removable.

14. In removing this action, THE TJX COMPANIES, INC. d/b/a T.J. MAXX specifically reserves all its defenses including, without limitation, all defenses specified in Rule 12(b) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant THE TJX COMPANIES, INC. d/b/a T.J. MAXX hereby petitions to remove this case from the Circuit Court for the County of Oakland, State of Michigan to the United States District Court for the Eastern District of Michigan, Southern Division, and requests that all future proceedings be held in this Court.

Respectfully submitted,
GARAN LUCOW MILLER, P.C.

/s/John J. Gillooly
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DATED: April 25, 2019
DETROIT-#1443660.docx

EXHIBIT A

FILED Received for Filing Oakland County Clerk 4/2/2019 3:16 PM

THE THURSWELL LAW FIRM, P.L.L.C.

Attorneys at Law

1000 TOWN CENTER

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This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/efiling.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MARSENA MUNDY-MILLER,

Plaintiff,

vs.

2019-172959-NO

Case No.: 19- -NO
HON. JUDGE DANIEL P. O'BRIEN

THE TJX COMPANIES, d/b/a TJ MAXX,

Defendant.

CARY M. MAKROUER (P26831)

REMA W. DASSOUKI (P82962)

THE THURSWELL LAW FIRM, P.L.L.C.

Attorneys for Plaintiff

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*There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the Complaint.*

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, MARSENA MUNDY-MILLER, by and through her attorneys, THE THURSWELL LAW FIRM, P.L.L.C., and for her Complaint states as follows:

1. Plaintiff is a resident of the City of Detroit, County of Wayne, State of Michigan.
2. Defendant, THE TJX COMPANIES, INC., d/b/a TJ MAXX (herein referred "TJ MAXX") is a Foreign Profit Corporation, and at all relevant times was doing business as TJ Maxx at 17740 Thirteen Mile Road, Beverly Hills, Michigan 48025, in the County of Oakland, State of Michigan. Defendant's resident agent

for service of process is The Corporation Company, located at 40600 Ann Arbor Road, E., Suite 201, Plymouth, Michigan 48170.

3. The amount in controversy exceeds the sum of Twenty-Five Thousand Dollars (\$25,000.00).
4. On or about July 12, 2017, at approximately 7:45 p.m., Plaintiff was a patron of the Defendant store and was therefore an invitee lawfully on the premises.
5. On or about the same date and location, Defendant, TJ MAXX, was the owner, operator, manager, or otherwise in control of the premises, which included the clothing/display racks.
6. Plaintiff was not guilty of negligence or comparative negligence in connection with the instant matter.
7. At the above place and on the same date, at approximately 7:45 p.m., Plaintiff was injured when a clothing/display rack fell on her right hand, wrist and arm, as a direct and proximate result of, including but not limited to, Defendant's failure to maintain the clothing/display rack in a safe condition; failure to properly assemble the clothing/display rack and failure to inspect and make safe its premises.
8. The condition complained of was not observable upon casual inspection.

COUNT I – NEGLIGENCE

9. Plaintiff incorporates paragraphs 1 – 8 of this Complaint.
10. It was the duty of TJ MAXX to provide a safe place for invitees such as Plaintiff and other similarly situated, and to exercise due care in the operation and maintenance of said premises so as to prevent injury to its invitees.

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11. Further, Defendant, TJ MAXX, had a duty toward Plaintiff and other patrons of said premises, as invitees, to inspect for dangerous conditions and to warn Plaintiff and other patrons of dangerous conditions of which it knew, or should have known.

12. Notwithstanding said duties, Defendant breached them in the following particulars:

- A. Negligently maintaining a dangerous and defective condition;
- B. Failing to take precautionary measures to correct or alleviate the unsafe condition created by the clothing/display rack;
- C. Failing to inspect said premises for dangerous conditions and failing to warn Plaintiff and others similarly situated of the unsafe condition after such time as Defendant knew, or could reasonably have known of the unsafe condition;
- D. Failing to warn Plaintiff and other patrons of the condition that caused Plaintiff's injury;
- E. Creating a dangerous condition by improperly maintaining the premises;
- F. Violation of local ordinance; and
- G. Performing other acts of negligence not yet known by Plaintiff, but which will be ascertained during the discovery of said litigation.

13. As a direct and proximate result of the negligence of Defendant, Plaintiff was struck on the right hand, wrist and arm and sustained injuries, including but not limited to, contusion of right hand and wrist, and any and all damages which the proofs may show.

14. As a further direct and proximate result of the aforementioned acts and omission of the Defendant, TJ MAXX, Plaintiff has suffered and will continue to suffer pain, humiliation, embarrassment, mental anguish, fright, shock, disability, loss of enjoyment of life, gross indignity and inconvenience because of the

permanent nature of said injuries; she has suffered or may yet suffer aggravation or activation of a pre-existing condition; she has suffered both wage loss and impairment of her earning capacity due to the permanent nature of her injuries.

15. That as a further result of Defendant's negligence, Plaintiff has suffered damages as previously stated herein.

WHEREFORE, Plaintiff prays for judgment against the Defendant, TJ MAXX, for damages in whatever amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) she is deemed to be entitled, together with costs, interest and attorney fees.

THE THURSWELL LAW FIRM, P.L.L.C.

BY: */s/ Cary M. Makrouer*
CARY M. MAKROUER (P-26831)
REMA W. DASSOUKI (P-82962)
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DATED: April 2, 2019

THE THURSWELL LAW FIRM, P.L.L.C.
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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MARSENA MUNDY-MILLER,

Plaintiff,

vs.

2019-172959-NO

Case No.: 19- -NO
HON. JUDGE DANIEL P. O'BRIEN

THE TJX COMPANIES, d/b/a TJ MAXX,

Defendant.

CARY M. MAKROUER (P26831)
REMA W. DASSOUKI (P82962)
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DEMAND FOR JURY TRIAL

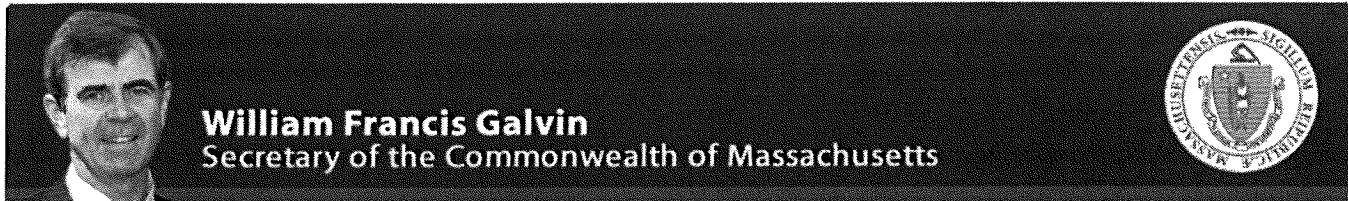
Plaintiff, by and through her attorneys, THE THURSWELL LAW FIRM, P.L.L.C.,
hereby formally demands a trial by jury of the within cause.

THE THURSWELL LAW FIRM, P.L.L.C.

BY: */s/ Cary M. Makrouer*
CARY M. MAKROUER (P-26831)
REMA W. DASSOUKI (P-82962)
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DATED: April 2, 2019

EXHIBIT B



Corporations Division

Business Entity Summary

ID Number: 042963233

[Request certificate](#)

[New search](#)

Summary for: THE TJX COMPANIES, INC.

The exact name of the Foreign Corporation: THE TJX COMPANIES, INC.		
Merged with COMMONWEALTH DIRECT MARKETING, on 07-18-1996 Merged with CODE BLAZER, INC. on 01-12-1998		
Entity type: Foreign Corporation		
Identification Number: 042963233		Old ID Number: 001001896
Date of Registration in Massachusetts: 06-05-1987		
Date of Withdrawal: 03-04-1991		Last date certain:
Organized under the laws of: State: DE Country: USA on: 05-12-1987		
Current Fiscal Month/Day: 01/31		Previous Fiscal Month/Day: 01/00
The location of the Principal Office: Address: ZAYRE CORP., TAX DEPT. 770 COCHITUATE ROAD City or town, State, Zip code, FRAMINGHAM, MA 01701 USA Country:		
The location of the Massachusetts office, if any: Address: City or town, State, Zip code, Country:		
The name and address of the Registered Agent: Name: JAY MELTZER Address: C/O TJX CO., 770 COCHITUATE RD., City or town, State, Zip code, FRAMINGHAM, MA 01701 USA Country:		
The Officers and Directors of the Corporation:		
Title	Individual Name	Address
PRESIDENT	BERNARD CAMMARATA	43 SARAH WAY, CONCORD, MA USA
TREASURER	STEVEN R. WISHNER	92 FOX RUN SUDBURY, MA 01776 USA
Business entity stock is publicly traded: <input type="checkbox"/>		

Page 2 of 2

The total number of shares and the par value, if any, of each class of stock which this business entity is authorized to issue:				
Class of Stock	Par value per share	Total Authorized No. of shares	Total par value	Total issued and outstanding No. of shares
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <input type="checkbox"/> Consent </div> <div style="text-align: center;"> <input type="checkbox"/> Confidential Data </div> <div style="text-align: center;"> <input type="checkbox"/> Merger Allowed </div> <div style="text-align: center;"> <input type="checkbox"/> Manufacturing </div> </div>				
Note: Additional information that is not available on this system is located in the Card File.				
View filings for this business entity:				
<div style="border: 1px solid black; padding: 5px;"> <div style="background-color: #cccccc; padding: 2px 5px; margin-bottom: 5px;">All Filings</div> <div style="display: flex; justify-content: space-between;"> <div style="width: 90%;"> Amended Foreign Corporations Certificate Annual Report Annual Report - Professional Application for Reinstatement Articles of Consolidation - Foreign and Domestic </div> <div style="width: 10%; text-align: center;"> <div style="margin-bottom: 10px;">^</div> <div style="background-color: #cccccc; width: 20px; height: 20px; margin: 0 auto;"></div> <div>v</div> </div> </div> </div>				
<div style="border: 1px solid black; padding: 5px 20px; display: inline-block;">View filings</div>				
Comments or notes associated with this business entity:				

New search

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

MARSENA MUNDY-MILLER,

Plaintiff,

V.

Case No:
Judge
Magistrate

THE TJX COMPANIES, INC. d/b/a T.J. MAXX,

Defendant.

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AFFIDAVIT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

JOHN J. GILLOOLY, being first duly sworn, deposes and says, that he is associated with the law firm of GARAN LUCOW MILLER, P.C. and that he has been charged with the defense and representation of THE TJX COMPANIES, INC. d/b/a T.J. MAXX Defendant, herein; that in such capacity he has prepared the foregoing Notice for Removal of Cause to the

United States District Court, Eastern District of Michigan, Southern Division, that the matters set forth in said Notice are true except as to those matters stated herein to be upon his information and belief as to which matters he is informed and believes same to be true.

Further deponent sayeth not.

/s/John J. Gillooly
JOHN J. GILLOOLY (P41948)

Subscribed and sworn to before me
on the 25th day of April, 2019.

/s/Deborah Brossoit
Deborah Brossoit, Notary Public
County of Wayne, State of Michigan
My Commission Expires: 09/19/2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

MARSENA MUNDY-MILLER,

Plaintiff,

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Case No:

Judge

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THE TJX COMPANIES, INC. d/b/a T.J. MAXX,

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PROOF OF SERVICE

STATE OF MICHIGAN)

) ss.

COUNTY OF WAYNE)

DEBORAH BROSSOIT, being first duly sworn, deposes and says that she is employed with the law firm of GARAN LUCOW MILLER, P.C., and that on the 25th day of April, 2019, she caused to be served a true copy of **NOTICE FOR REMOVAL, AFFIDAVIT and PROOF OF SERVICE** upon the following:

Cary M. Makrouer, Esq.
Rema W. Dassouki, Esq.
cmakrouer@thurswell.com
aessey@thurswell.com

Clerk Assignment
OAKLAND COUNTY CIRCUIT COURT
1200 N. Telegraph Road, Dept. 404
Pontiac, MI 48341-0407

by electronic filing the foregoing paper with the Clerk of the Oakland County Circuit Court using the E-File & Serve system.

/s/Deborah Brossoit

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MARESENA MUNDY-MILLER,

Plaintiff,

Case No: 19-172959-NO
Judge Daniel P. O'Brien

v.

THE TJX COMPANIES, INC. d/b/a T.J. MAXX,

Defendant.

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Rema W. Dassouki (P82962)
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John J. Gillooly (P41948)
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jgillooly@garanlucow.com

NOTICE OF FILING OF REMOVAL

PLEASE TAKE NOTICE that a Notice of Removal of the entitled action from the Oakland County Circuit Court, State of Michigan, to the United States District Court for the Eastern District of Michigan, a copy of which is attached hereto, was duly filed April 25, 2019, in the United States District Court for the Eastern District of Michigan.

Respectfully submitted:

GARAN LUCOW MILLER, P.C.

/s/John J. Gillooly
Attorney for Defendants
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Dated: April 25, 2019

DETROIT-#1443666.docx

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MARESENA MUNDY-MILLER,

Plaintiff,

Case No: 19-172959-NO
Judge Daniel P. O'Brien

V.

THE TJX COMPANIES, INC. d/b/a T.J. MAXX,

Defendant.

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PROOF OF SERVICE

STATE OF MICHIGAN)) ss.
COUNTY OF WAYNE)

DEBORAH BROSSOIT, being first duly sworn, deposes and says that she is employed by GARAN LUCOW MILLER, P.C., and that on the 25th day of April, 2019, she served by electronic filing the foregoing paper with the Clerk of the Court using the Court's E-File & Serve system which will send notification of such filing to the following:

Cary M. Makrouer, Esq.
Rema W. Dassouki, Esq.
 cmakrouer@thurswell.com
 aesseily@thurswell.com

/s/Deborah Brossoit